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**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS,  
SAN ANTONIO DIVISION**

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Richard Brewer, et al.,  
*Plaintiffs,*

v.

Ron Nirenberg, et al.,  
*Defendants.*

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Civil Action No. 5:17-CV-00837-DAE

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**PLAINTIFFS' MOTION FOR LEAVE TO AMEND COMPLAINT**

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1. Plaintiffs request leave of the Court to file a 2nd amended complaint.
2. The grounds for this motion are that:
  - a. Leave to amend should be freely given, when justice so requires;
  - b. Plaintiffs are not guilty of undue delay;
  - c. Defendants will not be prejudiced by any delay that plaintiffs' amended complaint may cause;
  - d. Plaintiffs are not guilty of bad faith;
  - e. Plaintiffs' amendment is not futile; and,
  - f. Even though plaintiffs' amendment is submitted out of time, the amended complaint will not prejudice defendants and was not due to attorneys' nor plaintiffs' procrastination, but rather to the

difficulty of assembling law and investigating facts in a case of first impression of extraordinary acts novel in the history of Texas jurisprudence.

3. Plaintiffs propose to amend their complaint with arguments for taxpayer standing; for consideration of plaintiffs' First Amendment right of Free Speech in light of the recent *Masterpiece Cakes, Ltd. v. Colorado Civil Rights Comm'n* opinion; for defendants' violation of the Texas Antiquities Code and standing thereunder; and for failure of the public charitable gifts to defendants through their own conduct, which requires reversion in the donors.

4. For these reasons, plaintiffs ask that the Court do the following:
- a. GRANT Plaintiffs LEAVE to file a 2nd amended complaint with additional arguments for taxpayer standing; for consideration of plaintiffs' First Amendment right of Free Speech in light of the recent *Masterpiece Cakes, Ltd. v. Colorado Civil Rights Comm'n* opinion; for defendants' violation of the Texas Antiquities Code and standing thereunder; and for failure of the public charitable gifts to defendants through their own conduct, which requires reversion in the donors.; and,
  - b. Grant any other relief the Court deems appropriate.

Respectfully submitted this 11th day of June 2018.

s/ David D. Vandenberg  
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### CERTIFICATE OF SERVICE

I certify that on June 11, 2018, a copy of Plaintiffs' Motion for Leave to File a 2nd Amended Complaint was electronically filed on the CM/ECF system, which will automatically serve a Notice of Electronic Filing on the following attorney in charge for defendants, Ron Nirenberg, et al.

Deborah Lynn Klein  
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/s/ David D. Vandenberg

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### CERTIFICATE OF CONFERENCE

On June 11, 2018, I conferred with Deborah Klein, attorney for defendants, and she states : "Defendants oppose the filing of your proposed Second Amended Complaint. The Court's May 21 text order denied your prior attempt to file an amended complaint due to essentially procedural mistakes on your part. In the text order, the Court acknowledge that a corrected filing would necessarily be out of time. I interpret that order to be that you could late file to cure your procedural errors. What you now propose is a whole sale re-write of the petition, to include adding additional parties and new causes of actions. Since the deadline for amending the petition was April 9, 2018, such amendments are not timely."

/s/ KIRK DAVID LYONS

Attorney for Plaintiffs